

**COUNTY OF SAN DIEGO, CALIFORNIA**  
**BOARD OF SUPERVISORS POLICY**

**Subject**

Policy for the Use of Lien Contracts as Security for Improvements  
by Private Developers

**Policy  
Number**

I-71

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**Purpose**

To establish a policy which specifies the types of development for which a lien contract form of security may be used to guarantee construction of improvements.

**Background**

The lien contract as a form of security to guarantee the construction of future public improvements is authorized by Section 66499(a)(4) of the Government Code (Subdivision Map Act) where the local agency finds that it would not be in the public interest to require the installation of the required improvements sooner than two years after the recordation of the map. There is justifiable use of the lien contract as a form of security. There is also potential for its misuse.

**Justifiable Use:** When improvements are required as a prerequisite for development of commercial, industrial or multi-family residential property, but it is in the public interest to defer construction to a future time (no sooner than two years after recordation of the map), the lien contract gives the owner an inexpensive and effective means of assuring their future construction.

**Unjustifiable Use:** To transfer an obligation from a developer to a future buyer of any single family residential parcel.

In the use of a lien contract, there is the potential of trapping an unwary buyer. By limiting the use of the lien contract to commercial, industrial or multi-family residential property, purchase of the property would be for business purposes and a business purchaser is more likely to be fully aware of its significance.

**Policy**

It is the policy of the Board of Supervisors that:

The use of lien contracts as security for the future construction of required public improvements for minor subdivisions is limited to cases where it would not be in the public interest to require the installation of the required improvements sooner than two years after the recordation of the map and in which industrial, commercial or multi-family residential property is being developed for use by the owner and it is, therefore, unlikely that the lien contract will ever be foreclosed against a person unaware of its existence or its significance. Such use may be approved on a case-by-case basis, when recommended by the Director, Department of Public Works.

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Sunset Date

This policy will be reviewed for continuance by 12-31-09.

Board Action

6-26-79 (2)

7-8-80 (34)

7-26-88 (43)

12-12-89 (49)

6-5-90 (43)

10-23-90 (45)

5-15-96 (11)

08-07-02 (5)

CAO Reference

1. Department of Public Works

2. County Counsel